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12 Attorneys for Defendant

13 ETSY, INC.

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

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17 AS YOU SOW, a 501(c)(3) non-profit
corporation,

18 Plaintiff,

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20 v.

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22 ETSY, INC. and DOES 1-20, inclusive,

23 Defendants.
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Case No.: 24-cv-04203-SK

**DECLARATION OF NICHOLAS J.
HOFFMAN IN SUPPORT OF
DEFENDANT ETSY, INC.'S MOTION TO
DISMISS PLAINTIFF'S COMPLAINT
FOR FAILURE TO STATE A CLAIM**

Judge: Hon. Sallie Kim

Date: August 26, 2024

Time: 9:30 a.m.

Location: Courtroom C, 15th Floor

DECLARATION OF NICHOLAS J. HOFFMAN

I, Nicholas J. Hoffman, declare as follows:

1. I am an attorney at law licensed to practice before all the courts in the State of California and am a partner at McGuireWoods LLP, counsel for Defendant Etsy, Inc (“Etsy”). I have personal knowledge of the matters set forth in this declaration, and if called as a witness I could and would competently testify thereto.

2. I submit this declaration in support of Defendant Etsy’s Motion to Dismiss Plaintiff’s Complaint for Failure to State a Claim. Specifically, I provide this declaration to outline Etsy’s prior meet and confer efforts.

3. On March 20, 2024, after Plaintiff As You Sow had filed its first lawsuit (based on its January 18, 2024 notice of violation), I reached out to Plaintiff’s counsel Rachel Doughty to meet and confer regarding Plaintiff’s decision to file the lawsuit notwithstanding the Attorney General’s letter. I asked Plaintiff to provide any good faith basis for proceeding with a lawsuit given the Attorney General’s directive that Plaintiff did not have authority to sue in the public interest. Plaintiff’s counsel did not provide any California case law that would suggest Plaintiff was permitted to pursue the lawsuit.

4. On April 24, 2024, I informed Plaintiff’s counsel that Etsy intended to file a responsive motion as to Plaintiff’s first complaint.

5. On April 25, 2024, I engaged in a meet and confer telephone call with Plaintiff’s counsel about Etsy’s objections to the first complaint, including that Plaintiff had no authority to pursue the lawsuit in light of the Attorney General’s letter and that Plaintiff had violated Proposition 65’s mandatory waiting period. I explained to Plaintiff’s counsel that I believed these issues were incurable.

6. Following our meet and confer telephone call, on April 26, 2024, Plaintiff’s counsel agreed in an email that Plaintiff did prematurely file the first lawsuit (in relation to the first 60-day notice) and that Plaintiff would be attempting to re-file the lawsuit later. Plaintiff then dismissed the first complaint.

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1 I declare under penalty of perjury under the laws of the State of California and the United
2 States of America that the foregoing is true and correct.

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4 Executed on July 18, 2024 at Los Angeles, California.

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6 /s/ Nicholas J. Hoffman
7 Nicholas J. Hoffman
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Wells Fargo Center, South Tower, 355 S. Grand Avenue, Suite 4200, Los Angeles, California 90071-3103. On July 18, 2024, I caused the service of the foregoing document described as **DECLARATION OF NICHOLAS J. HOFFMAN IN SUPPORT OF DEFENDANT ETSY, INC.'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM**, addressed as follows:

Rachel S. Doughty
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Attorneys for Plaintiff
AS YOU SOW

☒ **BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices.

☒ **(BY ELECTRONIC TRANSMISSION):** I caused such document to be served electronically to the person's electronic service address by transmitting a PDF format copy of such document(s) to each person at the e-mail addresses set forth above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 18, 2024, at Los Angeles, California.

/s/ Miguelina Mendez
Miguelina Mendez